Supreme Court, U.S.
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No. 05-169

In The

Supreme Court of the United States

GERALD ROBINSON,

Petitioner,

v.

KAREN FORD-ROBINSON,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Arkansas

PETITION FOR WRIT OF CERTIORARI

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August 2, 2005

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QUESTION PRESENTED

Because due process bars interference with a parent's interest in the care, custody and control of his/her children, was petitioner denied due process of law when the state court granted visitation rights to a step-parent without applying the principals set forth in *Troxel v. Granville*, 530 U.S. 57 (2002)?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Gerald Robinson, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Arkansas in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Arkansas (App. B, *infra*) is reported at 2005 Ark. LEXIS 280 (May 5, 2005).

JURISDICTION

The Supreme Court of Arkansas decided the appeal in this case on May 5, 2005. (App. B, *infra*)

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the U.S. Constitution, § 1, provides as follows:

> [n]or shall state deprive any person of . . . liberty . . . without due process of law;. . . .

RULE OF EVIDENCE INVOLVED

None

STATUTORY PROVISION INVOLVED

Ark. Code Ann. § 9-13-103 provides as follows:

§§ 9-13-103. Visitation rights of grandparents when the child is in the custody of a parent

(a) For purposes of this section:

(1) "Child" means a minor under the age of eighteen (18) of whom the custodian has control and who is:

(A) The grandchild of the petitioner; or

(B) The great-grandchild of the petitioner;

(2) "Counseling" means individual counseling, group counseling, or other intervention method;

(3) "Custodian" means the custodial parent of the child with the authority to grant or deny grandparental visitation;

(4) "Mediation service" means any formal or informal mediation; and

(5) "Petitioner" means any individual who may petition for visitation rights under this section.

(b) A grandparent or great-grandparent may petition a circuit court of this state for reasonable visitation rights with respect to his or her grandchild or grandchildren or great-grandchild or great-grandchildren under this section if:

(1) The marital relationship between the parents of the child has been severed by death, divorce, or legal separation;

(2) The child is illegitimate and the petitioner is a maternal grandparent of the illegitimate child; or

(3) The child is illegitimate, the petitioner is a paternal grandparent of the illegitimate child, and paternity has been established by a court of competent jurisdiction.

(c)(1) There is a rebuttable presumption that a custodian's decision denying or limiting visitation to the petitioner is in the best interest of the child.

(2) To rebut the presumption, the petitioner must prove by a preponderance of the evidence the following:

(A) The petitioner has established a significant and viable relationship with the child for whom he or she is requesting visitation; and

(B) Visitation with the petitioner is in the best interest of the child.

(d) To establish a significant and viable relationship with the child, the petitioner must prove by a preponderance of the evidence the following:

(1)(A) The child resided with the petitioner for at least six (6) consecutive months with or without the current custodian present;

(B) The petitioner was the caregiver to the child on a regular basis for at least six (6) consecutive months; or

(C) The petitioner had frequent or regular contact with the child for at least twelve (12) consecutive months; or

(2) Any other facts that establish that the loss of the relationship between the petitioner and the child is likely to harm the child.

(e) To establish that visitation with the petitioner is in the best interest of the child, the petitioner must prove by a preponderance of the evidence the following:

(1) The petitioner has the capacity to give the child love, affection, and guidance;

(2) The loss of the relationship between the petitioner and the child is likely to harm the child; and

(3) The petitioner is willing to cooperate with the custodian if visitation with the child is allowed.

(f)(1) An order granting or denying visitation rights to grandparents and great-grandparents shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation under this section.

(2)(A) If the court grants visitation to the petitioner under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child unless the court makes a specific finding otherwise.

(B) If the court finds that the petitioner's visitation should be restricted or limited in any way, then the court shall include the restrictions or limitations in the order granting visitation.

(3) An order granting or denying visitation rights under this section is a final order for purposes of appeal.

(4) After an order granting or denying visitation has been entered under this section, the

custodian or petitioner may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

(g)(1) A court may order mediation services to resolve a visitation issue under this section if:

(A) Mediation services are available;

(B) Both parties agree to participate in mediation services; and

(C) One (1) or both of the parties agree to pay for mediation services.

(2) Records, notes, reports, or discussions related to the mediation service shall not be used by the court to determine visitation under this section.

(h)(1) A court may order counseling to address underlying matters surrounding the visitation issue under this section if:

(A) Counseling is available;

(B) Both parties agree to participate in counseling; and

(C) One (1) or both of the parties agree to pay for counseling.

(2) Records, notes, reports, or discussions related to the counseling shall not be used by the court to determine visitation under this section.

STATEMENT

A. Introduction

Petitioner, Gerald Robinson married Respondent, Karen Ford-Robinson on January 28, 2000. (T. 127) At that time, Petitioner had a son, Austin, that was almost five years old. (T. 153-155) Austin's biological mother had relinquished all her rights in regards to Austin and Petitioner had sole care, custody and control of him. (T. 129)

In May 2003, Respondent moved out of the marital home just as Petitioner was returning from temporary duty. (T. 141, 154) She left Petitioner and Austin without any warning. Two days later, Respondent filed for divorce but never mentioned anything about wanting visitation with Austin. Seven days later, Respondent filed an amended complaint and again did not request visitation. It was more than three months after the filing of the original divorce complaint that Respondent requested visitation.

B. The evidence at the hearing

Respondent testified that Austin called her mother and that she took care of him. (T. 155) Respondent's mother confirmed that Austin referred to Respondent as mother. (T. 169) This was even though Austin knew that Respondent was not his mother. (T. 170)

Petitioner testified that the relationship between Respondent and Austin was more like buddies. (T. 132)